

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**IOWA SELECT FARMS, L.L.P.**

Facility #60021 – Hines  
Hamilton County, Iowa  
Facility #60156 - Pogge  
Wright County, Iowa

ADMINISTRATIVE CONSENT ORDER  
NO. 2011-AFO- **13**

TO: Dwain Bankson  
Iowa Select Farms, L.L.P.  
811 S. Oak Street  
Iowa Falls, Iowa 50126

Mike Blaser, Registered Agent  
Iowa Select Farms, L.L.P.  
666 Grand Avenue, Suite 2000  
Des Moines, Iowa 50309-2510

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Iowa Select Farms, L.L.P., fka Iowa Select Farms, L.P., (Iowa Select) for the purpose of resolving alleged construction permit violations at Iowa Select's Hines facility and Pogge facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to Technical Requirements:**

Eric Wiklund, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to Legal Requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of Penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits

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issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

Iowa Select neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Iowa Select owns the Hines facility and the Pogge facility. The Hines facility is located at 2548 380<sup>th</sup> Street, Jewell, Iowa (Section 29, Ellsworth Township, Hamilton County) and is a 16,666 head swine finishing unit. The Pogge facility is located at 1580 120<sup>th</sup> Street, Kanawha, Iowa (Section 13, Boone Township, Wright County) and is a 16,500 head swine finishing unit. Both facilities utilize anaerobic lagoons for manure storage.

2. On November 4, 2010, Eric Wiklund, DNR Field Office 2 Environmental Specialist Senior, conducted a routine earthen manure storage structure inspection at the Hines facility. During the inspection, Mr. Wiklund observed two newly constructed manure transfer pits. Mr. Wiklund spoke with Dwain Bankson, Iowa Select representative, and Mr. Bankson stated the two permanent manure transfer structures had been constructed in the past year. The structures transfer manure from the pits to the lagoons and act as a permit manure transfer piping system. Mr. Wiklund noted that the pumping system was constructed with a section of the piping above the containment of the structure. Mr. Bankson also stated that two similar structures were also constructed at the Pogge facility in the past year. Following the inspection, Mr. Wiklund verified that construction permits had not been issued for the permanent manure transfer structures at the Hines and Pogge facilities.

3. On November 10, 2010, DNR issued a Notice of Violation letter to Iowa Select for the alleged construction permit violations discovered at the Hines and Pogge facilities. The letter requested information about the permanent manure transfer structures. The letter also informed Iowa Select that the violations were being referred for further enforcement.

4. On November 30, 2010, Iowa Select's attorney sent a response letter to Mr. Wiklund. The letter explained that Iowa Select disagreed with the conclusion that there had been rule violations at the Hines and Pogge facility. The letter further explained that although there was a disagreement as to the violations that Iowa Select would submit the requested information no later than January 31, 2011. On January 28, 2011, Iowa Select's attorney submitted information to the DNR regarding the construction of the permanent manure transfer structures.

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**IV. CONCLUSIONS OF LAW**

Iowa Select neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 459.303(1)(a)(1) and 567 IAC 65.7(1)(b)(2) require that a confinement feeding operation obtains a construction permit prior to constructing, installing or modifying a confinement building or a formed manure storage structure at a confinement feeding operation. 567 IAC 65.7(1)(b)(8) requires that an animal feeding operation obtain a construction permit prior to installing a permanent manure transfer piping system. During an inspection in November 2010, DNR Field Office 2 discovered that two new permanent manure transfer structures had been constructed at the Hines facility. It was also discovered that two similar permanent manure transfer structures had been constructed at the Pogge facility. The above-facts indicate violations of these provisions.

**V. ORDER**

THEREFORE, the DNR orders and Iowa Select agrees to do the following:

1. Iowa Select shall install a toe tile line system, similar to the system required pursuant to 567 IAC 65.15(14)(a)(2)(2) around the manure transfer structures at both the Pogge facility and the Hines facility within 30 days of the date the Director signs this administrative consent order;
2. If not already completed, Iowa Select shall modify the discharge pipes in the manure transfer structures at the Pogge facility and the Hines facility so that the hose coupling is below the top of the pit. This shall be done within 30 days of the date the Director signs this administrative consent order;
3. If not already completed, Iowa Select shall install high water level alarms in the manure transfer structures at the Pogge facility and the Hines facility within 30 days of the date the Director signs this administrative consent order; and
4. Iowa Select shall pay a penalty of \$7,000.00 within 30 days of the date the Director signs this administrative consent order.

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Iowa Select neither admits nor denies the determination of the penalty and enters into administrative consent order for settlement purposes only.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited alleged violations is the issuance this administrative consent order with an administrative penalty of \$7,000.00. The administrative penalty is determined using the following factors as set forth in 567 IAC Chapter 10: (a) economic benefit; (b) gravity of the violation and (c) culpability.

3. The DNR states the following in support of the penalty amount as agreed upon: (a) for economic benefit the DNR states Iowa Select's failure to timely obtain the proper construction permits for the construction of the permanent manure transfer structures at the Pogge facility and the Hines facility allowed Iowa Select to delay the costs of obtaining construction permits, including engineering costs; (b) for gravity, the DNR states that Iowa Select's failure to obtain construction permits prior to the construction threatens the integrity of the animal feeding program because the construction permits are used to ensure that structures are properly constructed to reduce the possibility of environmental harm and (c) for culpability, the DNR states that Iowa Select has a duty to remain knowledgeable of DNR's requirements and that Iowa Select should be aware of the construction permitting requirements.

**VII. WAIVER OF APPEAL RIGHTS**


This administrative consent order is entered into knowingly and with the consent of Iowa Select. For that reason Iowa Select waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

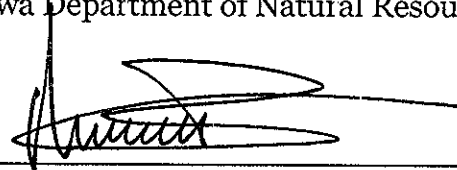
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the alleged violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to

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an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 9th day of  
June, 2011.

  
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Iowa Select Farms, L.L.P.  
By: Iowa Select Farms, Inc., General Partner  
By: It's Attorney

Dated this 1st day of  
JUNE, 2011.

Facility #60021 and Facility #60156; Kelli Book, DNR Field Office 2, EPA, Gene Tinker, VIII.A.1